

MINUTES OF MEETING

Kansas Real Estate Commission

October 9, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, October 9, 2014, at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

Sue Wenger, Chairperson
Joseph Vaught, Vice Chairperson
Errol Wuertz, Member
Shirley Cook, Member
Bryon Schlosser, Member

Staff Present:

Sherry C. Diel, Executive Director
Alexandra Blasi, Disciplinary Counsel
David Pierce, Director of Enforcement
Kelly White, Director of Education
Wendy Alkire, Compliance Supervisor
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General
Lisa Mendoza, Assistant Attorney General

Members of the Public Present:

Luke Bell, Kansas Association of Realtors (KAR)®
Tim Holt

Call to Order

Ms. Wenger called the KOMA meeting to order at 11:31 a.m.

Additions to the Agenda

No additions were made to the agenda.

Welcome New Commissioner

The Commission welcomed Bryon Schlosser as a new commissioner.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 11:36 a.m. for 10 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Blasi, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 11:45 a.m.

Correction to the June 18, 2014 Meeting Minutes

Motion was made by Mr. Wuertz, seconded by Mr. Vaught to approve as corrected the minutes of the June 18, 2014 meeting. The uncorrected minutes indicate that the March 13, 2014 minutes were added to the agenda and approved at the June 18, 2014 meeting. This should reflect that the April 10, 2014 minutes were added to the agenda and approved at the June 18, 2014 meeting. Motion carried unanimously.

Approval of the July 10, 2014 Meeting Minutes

Motion was made by Mr. Wuertz, seconded by Mr. Vaught to approve the minutes of the July 10, 2014 meeting. Motion carried unanimously.

Approval of the August 21, 2014 Meeting Minutes

Motion was made by Mr. Vaught, seconded by Mr. Wuertz to approve the minutes of the August 21, 2014 meeting. Ms. Cook objected to the minutes as presented. Ms. Cook stated that she had not seconded the motion to adjourn the August 21, 2014 meeting. Motion was made by Mr. Vaught, seconded by Mr. Wuertz to amend and approve the August 21, 2014 minutes to reflect that Ms. Wenger seconded the motion to adjourn. Motion carried unanimously.

Presentation of Licensure Qualifications for Similar Professions in Kansas

Ms. Fertig provided a presentation on what other licensing boards use as criteria for applicants who have a criminal conviction in their background. Generally, licensing boards require that the applicant provide some type of proof of rehabilitation when deciding whether or not to grant a license. One licensing board, the Kansas Commission on Peace Officers' Standards and Training (CPOST), has adopted a regulation which, in the opinion of the CPOST, defines which misdemeanors reflect negatively on the honesty, integrity, trustworthiness and competency of applicants.

Discussion on Weekly Commission Packets

Ms. Diel reported to the Commission on the effectiveness of weekly Commission packets. The Recommendation section of the summary has recently been moved to page one so that Commissioners can immediately see what staff recommends. Staff's recommendations are made as a guide so Commissioners can see what previous Commissions have decided in similar situations and what standard restrictions and conditions can be imposed in regard to the situation. Consistent restrictions and conditions enable staff to utilize templates when preparing orders, thus streamlining the order preparation process and more efficiently utilizing agency resources. Consistent decisions also allow more efficient tracking mechanisms as well as ensure compliance with district court and appellate court decisions. Ms. Diel reported that the weekly Commission packets help applicants by allowing applications to be considered by the Commission on a more timely basis. Ms. Fertig indicated that it was certainly acceptable to have a split vote on an application, such as a 4-1 vote. The Commission agreed that the weekly Commission packets should continue.

There was discussion regarding using personal computers as opposed to Commission-issued laptops. Ms. Fertig explained that documents stored on the Commissioners' personal computers could be subject to open records or other requests. Ms. Blasi reiterated that the weekly packets and related emails should be accessed on the Commission-issued laptops.

Presentation and Discussion on Differences Between Summary Proceeding Orders and Consent Agreement and Final Orders

Ms. Blasi reported that a majority of orders issued by the Commission are Summary Proceeding Orders. The Summary Proceeding Order is a method allowed by the Kansas Administrative Procedure Act (KAPA) by which an agency can discipline a licensee or applicant. The recipient of a Summary Proceeding Order has the right to file an appeal in regard to the order. Once the order is mailed to the last known address, it is considered properly served. Although the recipient may not realize it, there is room for negotiation in regard to a Summary Proceeding Order. However, once a matter is referred for hearing, the Hearing Officer is tasked with deciding whether a violation occurred and negotiations are not available to the individual.

Another option available to the Commission is a Consent Agreement and Final Order. The Commission offers this type of order as a type of settlement and does not provide for appeal, as it is considered a Final Order. If the recipient does not agree with or return the signed Consent Agreement and Final Order, a Summary Proceeding Order must be issued instead.

Ms. Blasi asked the Commission for direction on its preference as to which type of order should be used for future matters. Ms. Blasi requested authority for Ms. Mendoza to decide which type of order would be appropriate for individual cases.

Confidential Deliberations

Ms. Diel requested that confidential deliberations be put on hold so that the Commissioners can work through the rest of the agenda.

Application Forms and Documentation Discussion

Ms. Diel reported that this item resulted from past Commission discussions regarding what documentation is required when an individual with a criminal history applies for a license as well as what is required for a broker to properly supervise a restricted licensee who has a criminal history. Licensees may not realize the lengthy process required to transfer a restricted license and supervising brokers may not understand they are liable for the restricted licensee's activities. Kansas real estate regulations and statutes do not define what is required of a supervising broker in such a situation. The Commission indicated an interest in requesting more information about rehabilitation efforts from applicants with criminal histories. However, the Commission should know what the revised application form will look like before it can require applicants to complete pre-licensure training on how to file a complete application.

One proposal was to send a standardized cover letter to the supervising broker when a new license is issued to a restricted licensee. The letter would explain what is required to transfer a license, how to deactivate a license, etc. The Commission tabled the letter until it is decided what information should be included in the letter. Articles will be published in the Commission's newsletter explaining the restricted licensee's and supervising broker's responsibilities, as well as the heightened reporting requirements of the supervising broker. Ms. Blasi explained that the newsletter is normally distributed each quarter and has been revised to serve as an informational resource to all licensees.

Ms. Fertig reported that the Commission can create a regulation which defines proper supervision. Before the regulation could be approved, a public hearing would be required. This hearing would give licensees an opportunity to express their thoughts on the proposed requirements. Ms. Diel reported a packet of proposed regulations is nearly ready for submission. Ms. Blasi indicated the proposed regulation could be

provided to the Commissioners for consideration as a future meeting. She also stated that staff can begin working on preparing videos which would help to reinforce these types of responsibilities for both restricted licensees and their supervising brokers.

Mr. Holt arrived at the meeting at approximately 12:55 p.m.

I-Team Discussion

Ms. Wenger, a member of the I-Team, explained that this item was to provide a forum for discussions on the origin of the I-Team, its purpose, and how it will move forward in the future.

Ms. Blasi reported that the primary purpose of the I-Team is to review complaints and determine if a violation occurred, but the committee also reviews policy decisions as well as proposed settlement offers. Currently, the I-Team membership consists of Ms. Wenger, Mr. Pierce, Ms. Alkire, Tim Holt, Jerry Gray, Ms. Mendoza, and Sam Blasi, Law Clerk. Ms. Diel and Mr. Pierce reported that while staff know the law, Mr. Holt and Mr. Gray, as the industry members, bring invaluable expertise on the practical side of issues. As the Commissioner on the I-Team, the Commission's authority rests with Ms. Wenger. Following an I-Team meeting, an order is issued reflecting the committee's decision on behalf of the Commission.

Ms. Wenger stated that approximately one month ago it was determined that both Mr. Gray and Mr. Holt would receive only the summary prepared by the investigator. Both gentlemen were invited to appear before the Commission to discuss this decision. Ms. Wenger reported that while unable to attend the Commission meeting, Mr. Gray, a former Commissioner and current I-Team member, had submitted a letter providing his thoughts on the I-Team. Mr. Holt, who was able to appear for the Commission meeting, presented his experiences as an I-Team member. Mr. Holt was appointed to the I-Team while he served as a Commissioner and has continued in that role. Mr. Holt reported that the I-Team was formed to allow appeals of disciplinary actions to be heard by an entity other than the investigatory or prosecutory body that made the original decision. Mr. Holt explained that he is a residential broker and Mr. Gray is a commercial broker, so both offer useful insights on their respective areas of expertise. Mr. Holt reported that there are times he is not comfortable in making decisions based only on what he has read in a summary. Mr. Holt feels there are times when being able to access a contract, letter, etc. is essential to making an informed decision. Mr. Holt reported he maintains confidentiality in regard to the information he reviews, but will follow whatever procedure the Commission chooses.

Ms. Wenger declared a 10-minute break at 1:35 p.m.

Ms. Wenger reconvened the meeting at 1:45 p.m.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 1:45 p.m. for 15 minutes to enter into an executive session for consultation with the Commission's attorney to seek legal advice on a matter protected by the attorney-client privilege. Those in attendance include the Commissioners, Ms. Fertig, and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 2:00 p.m.

Formation of I-Team Study Group

Following discussion on how the I-Team operates, motion was made by Mr. Wuertz, seconded by Mr. Vaught to approve the formation of a study group in order to study the I-Team history, membership, and determine how the committee will operate in the future. Motion carried unanimously. Ms. Wenger, Mr. Schlosser, Ms. Fertig, Mr. Pierce, Ms. Alkire, Ms. Diel, and Ms. Mendoza will serve on the study group. The study group will report back to the Commission with its findings. Motion carried unanimously.

Guidance Documents 13-01 and 13-02

Ms. Blasi reported that the Guidance Documents have been reviewed by herself, Ms. Wenger, Ms. Fertig, Ms. Diel, as well as staff. The proposed updates capture recurring types of applications that the Executive Director previously would have had to refer to the Commission for review because the issue falls outside the authority provided for in the Guidance Documents. The decisions issued by the Commission have been consistent in the past so that the proposed updates will help to streamline the approval process because the applications can now be approved by the Executive Director based on the Commission's previous decisions. As has been past practice, the Executive Director can always refer an application to the Commission if the Executive Director has any concern with the application.

Guidance Document 13-01 provides the Executive Director instructions, on behalf of the Commission, to approve or deny original applications. The proposed updates address: applicants who meet or exceed broker experience requirements, when a restricted broker's license can be approved, consistency with disciplinary action imposed against an applicant regarding tax matters, the restriction of applicants with pending misdemeanor charges, the length of time that has passed since certain criminal charges occurred, the addition of the crime of theft as requiring Commission review, and when an application can be denied due to the revocation of a professional or occupational license or because an applicant failed to properly complete the experience portion of a broker application. This document also provides that pleadings are not required for misdemeanor cases more than 10 years old if there is no intervening criminal history and a complete docket sheet is provided.

Guidance Document 13-02 provides the Executive Director instructions, on behalf of the Commission, to approve or deny renewal applications. The proposed updates address: the addition of applicants who have failed to respond to requests for audit information, the addition of the crime of theft as requiring Commission review, consistency with disciplinary action imposed against an applicant regarding tax matters, the restriction of applicants with pending misdemeanor charges, the length of time that has passed since certain criminal charges occurred, conditions that can be imposed on applicants with multiple alcohol or drug misdemeanor offenses, and when an application can be approved related to a felony conviction. This document also provides that pleadings are not required for misdemeanor cases more than 10 years old if there is no intervening criminal history and a complete docket sheet is provided.

Following Ms. Blasi's and Ms. Fertig's clarification on the proposed updates, motion was made by Mr. Wuertz, seconded by Ms. Cook to approve the proposed updates to Guidance Documents 13-01 and 13-02. Motion carried unanimously.

Format Used for Licensure Hearings

Ms. Blasi reported that in the past, in accordance with the Kansas Administrative Procedure Act (KAPA), the Commission has made a distinction between a conference hearing and a formal hearing. Normally, conference hearings do not involve a material dispute of the facts and there are no witnesses, whereas a formal hearing does involve a material dispute of the facts and witnesses are called to testify. Staff request

that future hearings are considered formal and the forms used in the hearing process be updated to reflect the correct wording, i.e., no distinction between conference and formal hearing will be made. Ms. Fertig reported that this request is not in dispute with the KAPA. Following discussion on this request, motion was made by Mr. Vaught, seconded by Mr. Schlosser to approve the request to remove the distinction between a conference hearing and a formal hearing. Motion carried unanimously.

2015 Legislative Agenda

Ms. Diel reported that the 2015 Legislative Session begins a new legislative cycle. There are two bills, the fee increase bill and a technical bill, which can be prepared for the upcoming session. Ms. Diel requested guidance on how the Commission wished staff to proceed with the bills. There was discussion reporting no negative response from the industry regarding a fee increase as well as suggestions that at least one Commissioner attend the legislative committee meetings with Ms. Diel. Commissioners suggested that they need to work with their legislative contacts to build consensus for the fee increase. Mr. Bell reported that the fee increase will be a priority on KAR's® legislative agenda for the upcoming session. The Commission consensus was that both bills be prepared for submission during the 2015 Legislative Session.

Mr. Bell left the meeting at approximately 2:30 p.m.

Staff Report Regarding FY 2015 – FY 2017 Budget

Ms. Diel reported that the budget did not balance using preliminary projections. Consequently, she had to review revenue estimates and recalculate the budget. To prevent the budget from appearing too high, she considered that the agency was not bringing in as much in fines because of the Audit By Mail Program. In addition, she did not want it to look like the agency was collecting fines to fund its operations. Ms. Diel calculated a 1 to 3 percent increase in revenue. She cut expenditures so that they remain at current levels. When it was decided not to hire in-house Litigation Counsel, Ms. Diel conferred with the Budget Analyst regarding a plan to re-hire in-house Litigation Counsel should the transition prove unsuccessful. The analyst reported that the budget must be built around current staffing levels. As a back-up plan, funds which could be used by the Commission to re-hire Litigation Counsel, should that be deemed necessary, were credited to Contractual Services. Because Contractual Services would contain a higher than normal balance, it might draw attention or questions from an analyst or legislator. If that occurs, it would be hard to defend the decision to credit the money to that account.

Ms. Diel reported that the enhancement request is built with \$50 statutory or a \$25 regulatory fee increase; basically, a \$25 fee increase for both salespersons and brokers. The budget analyst felt the best way to sell the fee increase was as a return to an existing level of service, including in-house Litigation Counsel and in-person auditor. The enhancement request includes at least a part-time auditor to conduct on-site audits, thus increasing the need for additional audit personnel. He also felt that Contractual Services and Commodities were important in securing the fee increase. Ms. Diel reported that staff training and building the Fee Fund balance were included as enhancements, but the budget analyst did not anticipate those would have much impact on the fee increase issue. In addition, additional staffing in Licensing is referenced as an enhancement.

Ms. Diel brought several specific items to the Commissioners' attention. First, the number of hearing requests for complaints has decreased while the number of hearing request for audits has increased. She also reported that the number of individuals eligible for original licensure as salespersons and brokers has increased, providing positive numbers for the agency's estimated revenue. Ms. Diel explained that FY 2014 is when the number of licensees began to increase. She also noted the reason for a deficit as well as

the actions, cuts, and efficiencies enacted by the Commission since FY 2012. Ms. Diel reported that a Fee Fund revenue estimate was included as part of the budget process, providing an estimate of the number of individuals licensed each year and tying calculations to those numbers. An analysis of the budget shows that the FY 2017 ending balance for the base budget would be \$12,095, which includes the retention of fines.

Ms. Diel noted that the FY 2015 budget includes \$100,000 from the Recovery Fund for the replacement of the agency's electronic records storage management system. These funds, approved during the 2014 Legislative Session, will be split between Contractual Services and Information Technology - Capital Outlay. Currently, staff is working with the Office of Information Technology Services (OITS) to locate the best electronic records storage management system.

Ms. Diel reported that although background checks are included in Contractual Services, the funds are a "wash" because the receipts are expended. In FY 2015, background checks are estimated to total \$94,400; in FY 2016, \$99,200; and in FY 2017, \$100,200.

Ms. Diel reported that the agency did not have input into what was included for Personnel Services for FY 2015 because the budget system automatically loaded what was previously approved. The vacant positions included on the agency's base budget organization charts are not funded.

There was discussion on whether a fee increase would dissuade individuals from entering the industry. Because the fee would be spread over a two-year period, it appears an increase would have little impact on the number of individuals obtaining a license.

Mr. Bell returned to the meeting at approximately 2:51 p.m.

Mr. Holt left the meeting at approximately 3:25 p.m.

Pearson VUE Contract

Ms. Diel reported that the Pearson VUE contract will expire on September 30, 2015. Pearson VUE has previously been the only vendor for such services; however, there are now three vendors who can provide these services. Therefore, the expiration of the contract will require that a Request for Proposal (RFP) be prepared and handled by the Department of Administration's Division of Purchasing.

Security Audit by Legislative Post Audit

Ms. Diel reported that Legislative Post Audit reviewed all state agencies and informed the agency that it needed to conduct a security audit of its Information Technology (IT) functions every three years. This includes the agency web site, servers, etc. and is done to ensure the agency is not exposed to outside entities. The cost to perform the audit is estimated at \$5,000 - \$6,000. There is a possibility that OITS can conduct the audit; otherwise, the agency will have to utilize a company called FishNet Security to perform the audit.

Security Policy for IT

Ms. Diel reported that a considerably stricter IT security policy resulted from a Legislative Post Audit security audit. The agency received a letter outlining goals for small agencies to meet. Ms. Blasi attended a "tech team" meeting of the small agencies on behalf of the agency. She reported that some small agencies opted not to participate in the policy because the security restrictions placed too great of a fiscal

and/or financial burden on the agencies. The small agencies have responded to the security policy requirements and are awaiting a response.

P-Card Desk Audit

Ms. Diel reported that an annual desk audit of the agency's P-Card (Procurement Card) has been conducted. The first recommendation made was to cancel Ms. Diel's P-Card. Ms. Diel opted not to cancel her card. The second item reported was that the agency was not properly recording information regarding transactions. After further discussion with the auditing entity, it was discovered that there was miscommunication as to where a description of the transaction should be recorded.

Electronic Records Management Storage System

Ms. Diel reported that because the agency's current electronic records management storage system is now obsolete, the 2014 Legislature approved using \$100,000 from the Recovery Fund to purchase a new electronic records management storage system. Ms. Diel reported that staff has met with two vendors. She also reported that the state of Kansas is trending toward storing electronic records in "the Cloud." Ms. Blasi explained that the state of Kansas currently uses Microsoft software for various functions (email, calendaring, etc.). The state of Kansas has chosen to switch to Microsoft 365, software which offers many of the same tools but in a Cloud-based system instead of a server-based system. This will make access, storage, and back-up much more efficient. However, the state has not finalized this option yet and the ability to store records in this manner is on hold until OITS makes a recommendation for the agency. It was also reported that changing to a Cloud-based system would not reduce the agency's records storage costs.

Real Estate Licensing System (RELS) Server Upgrade

Ms. Diel reported that the agency has two new servers. She has contacted the programmer on two different occasions to request assistance with programming, but has received no response. Ms. Diel will request assistance from the programmer one more time. If she receives no response, she will contact the contractor to ask if another programmer can be assigned to the agency.

Office Lease

Ms. Diel reported that the agency's office lease will expire in September 2017. The agency has been located at its current location for 22 - 23 years. Previous contract renewals have run for five-year periods. State of Kansas agencies normally begin the RFP process approximately two years prior to the lease expiration date. Currently, state of Kansas agencies are being moved out of certain state-owned buildings so that those buildings can be sold or demolished. This could cause a timing issue for the agency. Lastly, Ms. Diel reported a steep increase in lease rates. For example, an agency is paying approximately \$17,000 per year to store its servers.

FY 2015 Year-to-date Expenditures and Receipts Report

Ms. Diel reported that additional information has been added to these reports. At 3/12's through the year, total appropriations should run at approximately 25% for the year. These appropriations are based on the budget submitted, which can change over time.

Encumbrances

Ms. Diel reported that two encumbrances listed, one for \$10,000 and another for \$5,200, are associated with the new online licensing system. The agency is waiting for testing to be completed on this system and the two encumbrances will be satisfied as soon as the system is ready to "go live."

Receipts

Ms. Diel reported that the 10% of receipts transferred to the State General Fund (SGF) total \$22,459. The agency transferred to the SGF a total of \$19,214 in fines and retained a total of \$4,600. Ms. Diel certifies the fines before forwarding the funds to the SGF. It is expected the amount of fine money retained will increase as investigative and other costs are factored in. Ms. Diel explained that the term "Recovery of Expense" relates to an expense that can be recaptured. Ms. Diel reported that information on the total amount of fines collected was included on the reports in order to provide information to the Commissioners if they wish to respond to concerns or allegations that the agency is collecting fines in order to support its operations.

Fee Fund

The Fee Fund Balance is \$325,878, but that balance does not reflect the outstanding encumbrances.

Ms. Diel reported that the agency had been expecting deficit spending in FY 2015, but even in an odd-numbered fiscal year, receipts are higher than expenditures. The deficit spending was anticipated because renewal groups are smaller in odd-numbered years. Mr. Bell reported that KAR® is over budget, nearly double, on new memberships.

Ms. Wenger declared a 10-minute break at 3:13 p.m.

Ms. Wenger reconvened the meeting at 3:25 p.m.

Duties of the Commission's Disciplinary Counsel and General Counsel

Ms. Blasi reported that the Disciplinary Counsel participates in I-Team meetings and is responsible for issuing all orders resulting from I-Team decisions. The primary questions considered in determining whether discipline is required include: 1) Is there sufficient evidence to justify taking the matter to hearing; 2) Is there evidence that a violation occurred; 3) Is the punishment authorized by law; and 4) Is the decision consistent with previous Commission action? Essentially, it is the Disciplinary Counsel's job to ensure that the Commission's decisions are in compliance with the license law and not outside the Commission's authority. Disciplinary Counsel cannot participate in any aspect of an investigation because investigators are often called as witnesses. If the Disciplinary Counsel is called as a witness, he or she would be prevented from representing the Commission at hearings. Ms. Blasi reported that things are transitioning in the drafting and reviewing of orders. Mr. Blasi has been trained in the drafting of licensure orders. He continues to garner experience in the drafting of enforcement orders. Ms. Blasi is responsible for making sure all orders are drafted and for reviewing all orders so that the orders match the Commission's decision. She also designates which exhibits are to be included in the orders or used at hearings as well as ensuring compliance with the KAPA on such things as proper execution, service, etc. Ms. Blasi negotiates settlement with the parties and confers with the Commission member vested with settlement authority to discuss proposed settlements. Ms. Mendoza will also be handling settlements and litigation. Disciplinary Counsel also answers questions about hearings, verifies exhibits and witnesses, oversees additional research related to investigations where new information has been discovered, and prepares questions for witnesses and the respondent. Disciplinary acts on behalf of the Commission during the administrative hearing process. Ms. Blasi also reported that the Attorney General's Office has been tasked with handling cases that are appealed beyond the District Court level.

As the Commission's General Counsel, Ms. Fertig handles all matters not handled by the Disciplinary Counsel. Questions on topics such as liability, human resources, Kansas Open Records Act, Kansas Open

Meetings Act, calls from constituents, letters from legislators, or licensure issues should be addressed to Ms. Fertig. Basically, if a question deals with discipline or litigation, Ms. Mendoza is the proper contact; otherwise, Ms. Fertig is the proper contact. If the Commissioners are contacted by a constituent regarding the constituent's individual case, the Commissioner should refer such communication to Ms. Fertig to prevent *ex parte* communication.

Legal Department Status Report

Ms. Blasi reported that there is no longer a backlog of old orders. All orders currently being worked have resulted from recent decisions. It takes approximately 3-4 weeks for the order to be prepared and mailed. In FY 2015, there have been 74 orders issued, not including audit orders.

Ms. Blasi reported that the standard I-Team reports have been provided for the Commissioners to review. If the Commissioners would like more information included on the monthly reports, Ms. Blasi can provide that. Ms. Blasi clarified what the "Open Date" was in reference to various matters. For discipline matters, the "Open Date" refers to the date the matter was discussed at an I-Team meeting or the date it was referred to Enforcement. For licensure matters, the "Open Date" refers to the date the completed application was received at the agency office. For audit matters, the "Open Date" refers to the date the audit was conducted. Ms. Blasi explained the Summary Report, including clarification on warning letters that were issued and the most common type of fines issued were between \$150 to \$200. Only approximately 10% of agency fines have been over \$1,000. Ms. Blasi explained that a large percentage of standard fines are in the \$150 to \$250 range.

Mr. Pierce reported on a situation involving a main office with multiple branch offices. If all branch office activities are conducted through a main office which is audited, a fine in such a situation may appear quite high.

Correspondence Regarding Audits

Mr. Wuertz reported he had received letters from two brokers regarding recent audits. Del Fisher, a broker from Larned, Kansas reported that emailing all correspondence and the inability to request assistance during the audit put him at a disadvantage. Mr. Fisher felt the fines and continuing education requirements imposed for both he and his salesperson were simply a method of raising revenues, not to help him or his salesperson. The second letter was from Roger Sell, a broker from Great Bend, Kansas. Mr. Sell reported most brokers are unhappy with the new audit procedure, the high fines and continuing education requirements imposed, and he feels that the Commission fines are simply a method of recovering funds the state of Kansas has eliminated from the agency's budget. Mr. Sell feels the audit information request form is vague, stating that licensees being audited are not told the proper documentation to provide for an audit and are then punished for not providing the proper documentation.

Ms. Blasi reported the violations found during the audits of Mr. Fisher's and Mr. Sell's companies. None of the violations involved HUD-related issues, but did involve serious issues such as agency and failure to supervise affiliated licensees. Neither broker requested a hearing regarding the violations found. Mr. Wuertz will respond to the letters he received.

In conjunction with the letters received from Mr. Fisher and Mr. Sell, Ms. Blasi reported that while certifiable costs are now retained from fines collected, the fine structure has not changed for a number of years. The only recent revision occurred in December 2013 when fines relating to the Audit By Mail Program were

updated so that some violations were removed from the structure and a warning letter was issued instead of a fine being imposed.

Ms. Blasi requested that the Commission let her know if they want additional or different information provided.

Commissioner Luncheon/Reception

Ms. Diel reported that she had responded to Harvey Bodker's request to hold a luncheon for past and present Commissioners. Ms. Diel informed Mr. Bodker that the Commission was considering holding such a luncheon or reception in conjunction with Legislative activities on a future date. However, that may be too large of an undertaking at this time. Mr. Bodker indicated he wanted a simple luncheon and was willing to pay for the luncheon himself if that was needed. It was suggested that staff see if Mr. Bodker was interested in setting up such a luncheon himself. Ms. White and Mr. Pierce will provide Mr. Bodker with a list of past Commissioners.

Expansion to Two-day Commission Meetings

Ms. Wenger clarified that due to the length of recent agendas, it has been suggested that the Commissioners conduct hearings at 1:00 p.m. one afternoon and convene for the Commission meeting the next morning. Ms. Diel suggested the meetings might want to move closer to the middle of each month. Ms. Diel reported that such a transition will increase costs slightly. Currently, Commissioner per diems run between \$76-80 per day/per person and hotel accommodations run approximately \$100 per night/per person. Each in-person meeting costs approximately \$820. Ms. Blasi suggested that Commissioners consider hearings scheduled when considering such a transition. At this time, the Commission did not take action on this item.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 4:15 p.m. for 20 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners and Ms. Fertig. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 4:43 p.m.

Recognition of Alexandra Blasi

The Commission recognized Ms. Blasi and thanked her for her service to the agency.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Cook, Ms. Wenger recessed the KOMA meeting at 4:43 p.m. for 20 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Fertig, and Ms. Diel. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 5:05 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 5:05 p.m. for 20 minutes to enter into an executive session to protect the privacy of those

involved. Those in attendance include the Commissioners, Ms. Fertig, and Ms. Diel. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 5:30 p.m.

I-Team Statistics Report, Education Report, and Director's Report

Ms. Diel reported that the I-Team Statistics Report, Education Report, and the Director's Report had been provided for the Commissioners' review.

Public Comments

There were no public comments.

Consideration of Licensure Applications in Confidential KAPA Deliberations

Due to a timing issue, the Commission rescheduled consideration of licensure applications in confidential KAPA deliberations to Tuesday, October 14, 2014 at 1:00 p.m. via conference call.

Upon a motion from Ms. Wenger, seconded by Mr. Vaught, the meeting was adjourned. Motion carried unanimously.

Adjournment

Ms. Wenger adjourned the meeting at 5:42 p.m.